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NO. 96-947

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

JODY H. DERAMUS, Individually and as Administratrix of the Estate of Frank Deramus,
*Petitioner*

v.

JACKSON NATIONAL LIFE INSURANCE COMPANY,
*Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

# BRIEF OF THE STATE OF TEXAS, THE STATE OF DELAWARE, THE STATE OF LOUISIANA, THE STATE OF NORTH DAKOTA, AND THE STATE OF SOUTH DAKOTA AS AMICI CURIAE SUPPORTING PETITIONER

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# AMICUS CURIAE BRIEF FOR THE STATES OF TEXAS ET AL. SUPPORTING PETITION FOR A WRIT OF CERTIORARI

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The State of Texas by its Attorney General Dan Morales, the State of Delaware by its Attorney General M. Jane Brady, the State of Louisiana by its Attorney General Richard P. Ieyoub, the State of North Dakota by its Attorney General Heidi Heitcamp, and the State of South Dakota by its Attorney General Mark Barnett (the "Amici"), respectfully submit this brief as Amici Curiae in support of the petition for a writ of certiorari.

## INTERESTS OF THE AMICI

The Petition in this case raises the issue of whether certification procedures, allowing federal appellate courts to obtain authoritative rulings by the highest state courts on

important matters of state law, should be preferred over the *Erie*-guess method when state law issues are presented in cases before the federal courts.

Each of the Amici is a state which has adopted provisions for the certification by federal courts of state law issues to their respective supreme courts. The Amici have compelling interests in the effective use of their state law certification procedures, not only as a matter of comity and to protect the authority and competence of their respective judicial systems, but also to avoid incorrect and confusing speculation by federal courts as to the substance of state law. As this Court has recognized, "[i]n a Federal system, it is obviously desirable that questions of law which . . . are both intensely local and immensely important to a wide spectrum of state government activities be decided in the first instance by state courts." *Elkins v. Moreno,* 435 U.S. 647, 662 n. 16 (1978). The Amici take no position on the merits of the Petitioner's underlying claims for damages against the Respondent insurance company or on the substance of Mississippi law.

## STATEMENT OF THE CASE

As the result of a routine physical examination in connection with an application for life insurance, the Respondent insurance company discovered that Petitioner's husband was infected with the AIDS virus (HIV). Respondent informed over 600 other companies, through the Medical Information Bureau, of the husband's abnormal blood test. However, it did not alert the couple or the husband's doctor of the HIV-positive finding; nor, apparently, were state health authorities notified. Only a year and a half later, after the husband had fallen severely ill, did the couple learn from a hospital in Maryland of the nature of his disease.

The husband died of AIDS complications less than two years later. After his death, Petitioner brought suit against Respondent in the state court of Mississippi, where the couple

had lived, seeking redress for herself and for the husband's estate for the company's failure to inform them of his AIDS infection in a timely manner.

Based on diversity of citizenship, Respondent removed the case to the U.S. District Court for the Southern District of Mississippi, which granted the company's motion for summary judgment and dismissed the action with prejudice. The district court held that, because the state courts had never ruled definitively as to an insurance company's duty of disclosure in such circumstances, it was required to make "an *Erie*-guess as to how the Mississippi Supreme Court would rule." In doing so, the federal court concluded that Mississippi law did not subject Respondent to liability for failing to disclose the results of the husband's blood test. On appeal, the Fifth Circuit accepted the "*Erie*-guess" and affirmed "on the basis of the district court's Memorandum and Order attached hereto" without further explanation or comment. *Deramus v. Jackson National Life Insurance Company*, 92 F.3d 274 (5th Cir. 1996) (per curiam).

## CONSIDERATIONS FAVORING REVIEW

This case presents an opportunity for the Supreme Court to clarify and underscore the importance of state law certification in our system of "cooperative judicial federalism."

The Court has repeatedly employed the certification procedure and has strongly endorsed it for use by lower federal courts in appropriate cases. *E.g., Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 396-96 (1988) ("Certification, in contrast to the more cumbersome . . . abstention doctrine, is a method by which we may expeditiously obtain [authoritative] construction" of a challenged state law by the Supreme Court of the state); *Elkins v. Moreno*, 435 U.S. at 662 n.15 ("availability of an adequate certification procedure 'does, of course, . . . save time, energy, and resources and helps build a cooperative judicial federalism.'"), quoting *Bellotti v. Baird*, 428 U.S. 132 at

150-51 (1976); *Lehman Brothers v. Schein*, 416 U.S. 386, 391 (1974).

The Amici are concerned, however, that the federal courts of appeals are still using the "*Erie*-guess" approach to decide important state law issues which arise in cases over which the federal courts have jurisdiction, as exemplified in this case.

This appears to be an appropriate time for the Court to consider whether the federal courts of appeals should presumptively use certification to the Supreme Court of a state to resolve uncertain issues of state law whenever the procedure is available. A federal court hearing private civil litigation should not await an affirmative request by one of the parties before certifying an issue to state court, as the state and public interests at stake — including the state's interest in having its own courts decide important matters of state law — often far transcend the interests of any particular party. (Indeed, in each such case at least one of the sides has already concluded, in an original pleading or by removal, that its private interest lies in selecting a federal forum.) Certification should be ordered as a matter of course on important issues of state law which the state courts have not yet addressed or resolved; however, if the federal court decides as a matter of discretion in a particular case that the matter should *not* be certified, its specific reasons (such as an extraordinarily urgent need for prompt disposition of the case) should be stated on the record.

## CONCLUSION

The Amici respectfully urge the Court to grant the Petition for a writ of certiorari to the Fifth Circuit. On review, the Court should hold that, where a certification procedure has been made available by the state, there is a rebuttable presumption in favor of certification to obtain an authoritative determination by the state Supreme Court when a federal court of appeals is faced with important and unsettled issues of state law, especially

where they implicate critical public health and public policy concerns of the state, such as those raised in this case.

Respectfully submitted,

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